



June 10, 2013

Dear Trustee:

On May 9, the Department of Justice and the Department of Education sent a letter to the University of Montana regarding their investigation of the school's handling of allegations of sexual assault and harassment at UM's Missoula campus.

In what it called "a blueprint for colleges and universities throughout the country," the federal departments issued sweeping changes to their enforcement standards, likely to impose costly regulatory requirements—and certain to restrict the free exchange of ideas—at institutions such as yours.

Trustees have a solemn obligation to protect and defend the free exchange of ideas and academic freedom on college campuses. As outlined below, we urge you to oppose any efforts by your institution to respond to the government's announced changes, pending the release of a binding standard that explicitly overturns current precedent.

In finding that University of Montana policies failed to comply with federal law, the government's letter deviated from long-established legal precedent, dropping the "reasonable person" standard from the definition of sexual harassment, now more broadly described as "unwelcome conduct of a sexual nature."

Although addressed only to the University of Montana, the consequences for colleges and universities are substantial if, as the letter suggests, they are applied broadly to institutions across the country. Under this new standard, institutions are responsible for preventing "unwelcome" conduct, regardless of whether it is "objectively offensive." The breadth of this definition will likely increase institutions' liability risks—along with the legal expenses to mitigate those risks. And because the federal government's definition of harassment includes forms of "verbal [or] nonverbal" conduct, it will mostly result in the expansion of campus speech codes, which already unconscionably impair the academic freedom and free speech rights of students and faculty. It is noteworthy that media commentary on the letter has uniformly condemned the federal government's new standard as vague, overbroad, unduly burdensome, and a violation of the First Amendment and free expression which are the foundations of American higher education.

As a fiduciary, you have a responsibility to ensure that your college or university promotes the free exchange of ideas while being a dutiful steward of the institution's—and often taxpayers'—resources.

Accordingly, we urge you to avoid any hasty changes in policy. Insist that your president call upon legal counsel to produce a report outlining existing policies and procedures as

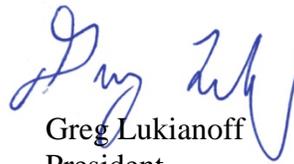
well as the policies and procedures (and attendant costs) that would be necessary to implement the Montana standard. Make clear that administrators must report to you any changes they propose in policy before any action occurs. And contact your Congressional Delegation to let them know that you are deeply troubled by this regulatory pronouncement which, although no doubt well-intended, places a new and immense regulatory burden on your institution while undermining academic freedom and the free exchange of ideas.

The American Council for Trustees and Alumni (ACTA) and the Foundation for Individual Rights in Education (FIRE) are at your service as you carry out these important duties.

Sincerely,



Anne D. Neal
President
American Council of Trustees and Alumni



Greg Lukianoff
President
Foundation for
Individual Rights in Education